

REMARKS

The applicants have studied the Final Office Action dated February 11, 2004, and have made amendments to the claims. By virtue of this amendment, claims 1-13 and 89-90 are pending and claim 1 has been amended. It is respectfully submitted that the application, as amended, is in condition for allowance.

Prior to Examiner Thissell's departure from the Patent Office, the applicants scheduled and confirmed an interview with Examiner Thissell (see A-1). Examiner Thissell informed the applicants of his departure date and that he was willing to conduct a telephonic interview during his last days (see A-2). Amendments were discussed with Examiner Thissell and he agreed that the case would be allowable with a minor amendment that he would enter as an Examiner's Amendment. He confirmed that he allowed the case and passed it on to his Primary Examiner for issuance of a Notice of Allowance in his April 24, 2004 email (A-3 to A-4). Since that time, the applicants have not received a Notice of Allowance or seen any change in status on PAIR. Applicants did attempt to call the Primary Examiner, but were unsuccessful. Accordingly, as this case is under final rejection and the time continues to run, the applicants have filed this response with an Extension of Time and Notice of Appeal to avoid further extensions.

Claims 1-3, 6-11, and 89-90 were rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,165,407 to Wilson et al. In view of the above amendments previously approved by Examiner Thissell before his departure, the applicants respectfully submit that the rejection of claims 1-3, 6-11, and 89-90 under 35 U.S.C. § 102(b) should be withdrawn.

Claims 4 and 5 were rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,165,407 to Wilson et al. in view of U.S. Patent No. 5,390,671 to Lord et al. This rejection is respectfully traversed.

Claims 4 and 5 depend from independent claim 1. Claim 1 has been patentably distinguished over Wilson et al. reference, as discussed above. Accordingly, claims 4 and 5 are

also distinguished over the Wilson et al. reference. Therefore, it is respectfully submitted that the rejection of claims 4 and 5 under 35 U.S.C. § 103(a) should be withdrawn.

Claims 12 and 13 were rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,165,407 to Wilson et al. in view of U.S. Patent No. 6,256,937 to Schulman et al. This rejection is respectfully traversed.

Claims 12 and 13 and their base claims also depend from independent claim 1. Claim 1 has been patentably distinguished over Wilson et al. reference, as discussed above. Accordingly, claims 12 and 13 are also distinguished over the Wilson et al. reference. Therefore, it is respectfully submitted that the rejection of claims 12 and 13 under 35 U.S.C. § 103(a) should be withdrawn.

Therefore, in light of the above remarks, it is respectfully submitted that claims 1-13, 89, and 90 are in condition for allowance.

If for any reason the Examiner finds the application other than in condition for allowance, the Examiner is requested to call the undersigned attorney at the Northridge, California, telephone number (818) 576-4110, to discuss the steps necessary for placing the application in condition for allowance.

Respectfully submitted,

Dated: 6/10/04

By: Richard Yoon
Richard Yoon
Reg. No. 42,247

Medtronic MiniMed, Inc.
18000 Devonshire Street
Northridge, CA 91325-1219
Telephone (818) 576-4110
Facsimile (818) 576-6202

Kovelman, Paul

From: Thissell, Jeremy [Jeremy.Thissell@USPTO.GOV]
Sent: Tuesday, March 02, 2004 12:07 PM
To: Kovelman, Paul
Subject: RE: April 30 Interview 09/779,282

Confirm interview on Friday April 30, 2004 at 11:00 am Eastern time.

I'm in Crystal Plaza 2 (CP2). Please see the receptionist on the 2nd floor.

Regards,
-Jeremy

-----Original Message-----

From: paul.kovelman@medtronic.com [mailto:paul.kovelman@medtronic.com]
Sent: Tuesday, March 02, 2004 1:08 PM
To: Thissell, Jeremy
Cc: richard.yoon@medtronic.com
Subject: April 30 Interview 09/779,282

Examiner Thissell:

Thank you for talking with me today. I want to confirm our interview on Friday, April 30, 2004 to discuss the claims and art in 09/779,282 filed February 8, 2001 (our docket PD-0436). We received a final Office Action on February 11, 2003. We hope to have some samples and materials to facilitate the discussion.

Please also confirm your office location and building for the interview.

I look forward to meeting with you.

Paul

Paul H. Kovelman
Vice President of Intellectual Property & Patent Counsel
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A -1

Kovelman, Paul

From: Thissell, Jeremy [Jeremy.Thissell@USPTO.GOV]
Sent: Wednesday, April 14, 2004 1:32 PM
To: Kovelman, Paul
Subject: RE: April 30 Interview 09/779,282

Mr. Kovelman,
I just left you a voicemail, but figured I'd shoot you an email as well, since I have your address.

Regarding the interview, I will no longer be working at the patent office by then. I apologize for this, but I did not know at the time we scheduled the interview. If you would like to have a phone interview soon, I would be happy to accommodate that. Otherwise, I can arrange to have my supervisor either handle either the interview itself or delegation to the next examiner. Please feel free to email or call me at 703-305-5261.

Regards,
-Ex. Thissell

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A - 2

Kovelman, Paul

From: Thissell, Jeremy [Jeremy.Thissell@USPTO.GOV]
Sent: Wednesday, April 21, 2004 2:35 PM
To: Kovelman, Paul
Subject: RE: 09/779,282

I have gone ahead with the allowance, but the case is still waiting for my supervisor to review it. If you have any further questions beyond tomorrow, please contact him. His name is Brian Casler, and he can be reached at 703-308-3552.

Regards,
-Jeremy

-----Original Message-----

From: paul.kovelman@medtronic.com [mailto:paul.kovelman@medtronic.com]
Sent: Tuesday, April 20, 2004 1:35 PM
To: Thissell, Jeremy
Subject: RE: April 30 Interview 09/779,282

Examiner Thissell:

Thank you for talking with us last Thursday about a possible Examiner's amendment. I was checking to see if you could give us a status on your review of the case.

I appreciate your consideration and help, and I know how hectic it must be for you on these last few days.

Let me know if there is anything that I can do to assist you.

Paul

Paul H. Kovelman
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-----Original Message-----

From: Kovelman, Paul
Sent: Wednesday, April 14, 2004 3:15 PM
To: 'Thissell, Jeremy'
Subject: RE: April 30 Interview 09/779,282

Examiner Thissell:

Thank you for the voicemail and the E-mail. I would like to have a quick telephonic interview with you if possible tomorrow or Friday. The best times for me are: 12:30-2:45 pm EST and 4:30-8:00 pm EST for Thursday and 12:30-2:00 pm EST and 4:30-6:00 pm EST for Friday.

Please let me know what works for you. With thanks,

Paul

Paul H. Kovelman
Vice President of Intellectual Property & Patent Counsel
Medtronic MiniMed, Inc.

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A-3

18000 Devonshire Street
Northridge, CA 91325-1219
Tel: (818) 576-5313; Fax: (818) 576-6202
E-mail: paul.kovelman@medtronic.com

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